THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.10421 of 2007

Dated:21.08.2007

Between:

S.K.Kareemulla, S/o.Sri Kali Mashan,
and others.

…Petitioner

and

The Sub-Collector, Gudur,
Nellore District, and others.

…Respondents

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WRIT PETITION No.10421 of 2007

ORDER:

The petitioners, who are six in number, filed the instant Writ Petition assailing the order/notice dated 07.05.2007 issued by the Tahasildar, Gudur Mandal, under Section 6 of the Andhra Pradesh Land Encroachment Act, 1905 (for short 'the Act'), as illegal and arbitrary.

The case of the petitioners is that the third respondent allotted to them small extents of land/construction site, that they constructed shops on the sites, and are paying rents to the third respondent. They also allege that they got lease in their favour up to 31.08.2007. The second respondent initiated action under the Act and issued the impugned order, aggrieved by which, the present Writ Petition is filed.

It is the contention of the petitioners that as the land vests in the Municipality, the Tahasildar has no jurisdiction under the Act to evict the petitioners by issuing notice under Section 6 of the Act. The submission cannot be accepted.

In **K.Rama Krishna v. Municipal Council**[1] this Court considered the question whether vacant lands situated in the Municipality area vest in the Municipality absolutely? After referring to the provisions of Section 37 of the Andhra Pradesh Municipalities Act, 1965, this Court laid down as under.

> The law vests all the Government property in the Municipality. The Municipality is deemed to be in possession of all Government lands. The paramount owner of all vacant lands belonging to or under the control of the Government is the State. They are vested for a limited purpose in the Municipality for protecting them and keeping the vacant land free from all

> encumbrances. The vacant land belonging to the Government can be utilized in two ways – either by restoring the possession or control to the Government for any public purpose or the Municipality itself utilizing the land for construction of any building or structure with the prior permission of the Government. Therefore, the Municipality shall be deemed to be in possession of the Government land as a trustee. A trustee is required to take all necessary steps to protect the land from encroachment which is made clear in sub-section (2) of Section 37 of the Act…

Therefore, insofar as the jurisdiction of the Tahasildar to invoke the provisions of the Act is concerned, there cannot be any doubt. From the affidavit accompanying the Writ Petition or the documents annexed thereto, it is not clear whether the impugned order under Section 6 of the Act is preceded by a notice under Section 7 of the Act or not. Whatever be the case, against an order of eviction passed under the Act, the petitioners have an effective alternative remedy by way of an appeal before the Revenue Divisional Officer under Section 10 of the Act. The petitioners are given liberty to avail the same, and also obtain appropriate interim orders from the appellate authority.

This Writ Petition is misconceived, and the same is accordingly dismissed. No costs.

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(V.V.S.RAO, J)

21.08.2007
vs

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[1] 2000 (6) ALT 613